

SENATE BILL NO. 445

INTRODUCED BY K. BOGNER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PROFESSIONAL PERSON IN A CRIMINAL COMMITMENT PROCEEDING TO TESTIFY REMOTELY; AMENDING SECTION 53-21-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 53-21-126, MCA, is amended to read:

**"53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

- (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;
- (b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;
- (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and
- (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by

1 the respondent's relevant medical history.

2 (2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable  
3 doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters.  
4 However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat  
5 of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as  
6 to be material and relevant as to the respondent's present condition.

7 (3) The professional person appointed by the court must be present for the trial and subject to  
8 cross-examination. The professional person's presence may be accomplished by the use of two-way electronic  
9 audio-video communication. The trial is governed by the Montana Rules of Civil Procedure. However, if the  
10 issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is  
11 suffering from a mental disorder and requires commitment. The written report of the professional person that  
12 indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise  
13 inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court  
14 may order the trial closed to the public for the protection of the respondent.

15 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
16 suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied  
17 by evidence from the professional person or others that:

18 (a) the respondent, because of a mental disorder, is substantially unable to provide for the  
19 respondent's own basic needs of food, clothing, shelter, health, or safety;

20 (b) the respondent has recently, because of a mental disorder and through an act or an omission,  
21 caused self-injury or injury to others;

22 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to  
23 others because of the respondent's acts or omissions; or

24 (d) (i) the respondent's mental disorder:

25 (A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the  
26 respondent's life or health;

27 (B) is treatable, with a reasonable prospect of success;

28 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for

1 treatment; and

2 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the  
3 point at which the respondent will become a danger to self or to others or will be unable to provide for the  
4 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by  
5 the respondent's relevant medical history.

6 (5) The court, upon the showing of good cause and when it is in the best interests of the  
7 respondent, may order a change of venue.

8 (6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring  
9 diagnosis of chemical dependency may satisfy criteria for commitment under this part."

10

11 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

12

- END -